

Before the  
Federal Communications Commission  
Washington, D.C. 20554

ORIGINAL

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In the Matter of )

)  
Application by Ameritech Michigan Pursuant to )  
Section 271 of the Telecommunications Act of )  
1996 to Provide In-Region, InterLATA Services )  
in Michigan )

Docket No. 97- 137

RECEIVED

JUN 11 1997

Federal Communications Commission  
Office of Secretary

MOTION TO ACCEPT COMMENTS ONE DAY LATE

Bell Atlantic respectfully asks the Commission to accept the attached Comments of Bell Atlantic one day late. Because of unforeseen word processing problems producing the document, Bell Atlantic was unable to deliver the completed pleading prior to the Commission's 5:30 p.m. closing.

Accordingly, Bell Atlantic requests that the Commission accept the attached filing one day out of time, on the morning of the date after the filing was due. To ensure that no party is prejudiced, Bell Atlantic is serving its comments by hand or overnight courier on all parties filing comments in this proceeding

Respectfully Submitted,

**The Bell Atlantic Telephone Companies**

By their Attorneys

*Michael E. Glover*  
Michael E. Glover  
Leslie Vial  
1320 North Court House Road  
Eighth Floor  
Arlington, Virginia 22201  
(703) 974-4862

June 11, 1997

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COMMENTS OF BELL ATLANTIC

James R. Young  
Edward D. Young III  
Michael E. Glover  
Leslie A. Vial  
1320 North Court House Road  
8th Floor  
Arlington, VA 22201  
(703) 974-2944

Attorneys for Bell Atlantic

June 10, 1997

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Docket No. 97- 137

**COMMENTS OF BELL ATLANTIC<sup>1</sup>**

While the undersigned companies are not in a position to address the specific facts relied upon by Ameritech in its application to provide in-region, interLATA service in Michigan, Ameritech's application does raise legal issues that will likely arise in other Section 271 applications, regardless of the Bell company involved or the State at issue.

The FCC's principal responsibility in reviewing an application for interLATA relief is to determine whether the Bell company has opened its local exchange market in accordance with the explicit requirements of Section 271(c). See § 271(d)(3)(A). Under the terms of the act, a Bell company can satisfy the competitive checklist of subsection (c)(2)(B) through any combination of interconnection agreements and a statement of generally available terms and conditions, as long as each checklist

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<sup>1</sup> "Bell Atlantic" includes Bell Atlantic-Maryland, Inc.; Bell-Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; and Bell Atlantic Communications, Inc.

item is available through one or the other; a Bell company does not have to be actually furnishing each item on the checklist, as long as it makes each available to competing local exchange carriers; and, most important, a Bell company is entitled to interLATA relief upon a showing that its market is open under the standards of Section 271, whether or not any competitors have actually entered that market.

In addition, the Commission must determine that a particular request for interLATA authorization “is consistent with the public interest, convenience, and necessity.” § 271(d)(3)(C). The public interest standard is not, as some parties have suggested, another opportunity for the FCC to ask whether the local market is open. On the contrary, Congress itself has comprehensively set forth the requirements that must be satisfied in the local market through the statutorily-prescribed competitive checklist, and expressly prohibited the Commission from engrafting new requirements onto the checklist. § 271(d)(4).

### **ARGUMENT**

The Telecommunications Act of 1996, as Congress wrote it, opens the interLATA market to a Bell company once it has opened its local market to other carriers. The Act also tells the Bell company in direct terms what it must do to open its local market: It must make available, to every potential competitor upon demand, fourteen different network facilities and services set out by Congress in a comprehensive competitive checklist. § 271(c)(2). The Bell company demonstrates its compliance through either (A) one or more State-approved agreements with facilities-based or predominantly facilities-based competitors providing local service to business and residential customers; or (B) an approved or effective statement of terms and conditions available to any competitor upon demand, filed with the State commission. § 271(c)(1)(A)&(B).

Ameritech here seeks interLATA entry on the basis of three approved interconnection agreements with three competing providers.

**A. The Bell Company Satisfies the Competitive Checklist If the Items Are Available Through One or More Agreements or Through a Statement of Generally Available Terms**

It would be inconsistent with the language and purpose of the Act — and contrary to common sense — to require that the Bell company provide each of the 14 items on the competitive checklist through a single interconnection agreement. The objective, once again, is to open local markets to competition by requiring the Bell company to satisfy the checklist. This condition is satisfied whether a Bell company is providing two competitors with the checklist items through two agreements or whether the company is providing all items on the checklist through a single agreement. And it is satisfied just as equally whether a Bell company makes all of the checklist items available upon demand to any and all carriers through a statement of terms, or whether it makes the items available through individual agreements with certain providers.

The language of the Act confirms this simple observation. Section 271(c)(2)(A) requires (i) that the Bell company be “providing access and interconnection pursuant to one or more agreements” with competing providers “or” “generally offering access and interconnection pursuant to a statement” of generally available terms. § 271(c)(2)(A)(i) (emphasis added). The Act then also requires that “such access and interconnection meet[] the requirements of subparagraph (B),” the competitive checklist. § 271(c)(2)(A)(i) & (ii). Subparagraph (B) then introduces the checklist by declaring that it establishes requirements for access and interconnection “provided or generally offered” by the Bell company (emphasis added).

The Act, therefore, expressly allows the checklist items to be included in “one or more agreements.” It is enough — given the disjunctive “or” both in paragraph (A) and in paragraph (B) of section 271(c)(2) — that the Bell company be “offering” access and interconnection. On its face, the statute permits a Bell operating company to satisfy the checklist through any combination of agreements and a statement, so long as the various checklist items are available through one “or” the other.<sup>2</sup>

A construction that required all checklist items to be included in a single agreement or that did not permit reliance on a statement of terms would defeat rather than promote the purpose of the Act. It would allow competitors to foreclose a Bell company's entry into long distance, and thereby deprive consumers of the benefits of such entry, through the simple expedient of omitting a single checklist item from their interconnection agreements — and to do so despite the fact that the Bell operating company had opened its local market to competition by making all the checklist items available.

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<sup>2</sup> Some opponents of Bell company entry have argued that, if Congress had intended to permit an applicant to demonstrate its compliance by including some items in agreements and others in a statement, it would have used the word “and” in these provisions rather than the word “or.” But use of the word “and” would have required all the checklist items to be included in both an agreement and a statement. This would have made no sense.

**B. The Bell Company Need Not Actually Be Furnishing All Items on the Competitive Checklist**

Whether a Bell company relies only on its interconnection agreements to demonstrate compliance with the checklist or uses a statement to show the availability of certain items, the company need not actually be furnishing all checklist items. The Bell company meets its obligation to “provide” all items if all items are available. § 271(c)(2).

The Act nowhere suggests that a Bell company must be furnishing, and that a local competitor must be using, every checklist item. Such an interpretation would render the Bell companies — and development of competition in the long-distance market — hostage to the strategic purchasing decisions of local competitors. It would also turn on its head the Act’s encouragement of more, rather than less, facilities-based competition. The more of its own facilities a competitor has, the less it needs to use all of the checklist items. As a result, a Bell company that faces competition from competitors that have all their own facilities, while meeting all of Congress’ objectives, could not qualify for long distance relief.

Consequently, the only sensible interpretation is that a Bell company “provides” a checklist item if it is either furnishing the item or making the item available to a competitor.<sup>3</sup> In addition to making good policy sense and comporting with the Act’s design to promote free markets, this interpretation accords the language of the Act, “to provide,” a natural and familiar definition — “to make available.” Random House Unabridged Dictionary 1556 (2d ed., 1993);

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<sup>3</sup> See Evaluation of the United States Department of Justice, Application of SBC Communications, Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Oklahoma, CC Dkt No. 97-121, at 23 (May 16, 1997) (“A BOC is providing an item, for purposes of checklist compliance, if the item is available both as a legal and practical matter, whether or not any competitors have chosen to use it.”) (“DOJ Evaluation”).

see also Merriam's Webster's Collegiate Dictionary 940 (10th ed., 1993) (“supply or make available”). And this interpretation is consistent with the legislative history addressing the possibility that new competitors may not want every item on the competitive checklist. “Under these circumstances,” Congressman Paxon explained, “the Bell operating company would satisfy its obligations by demonstrating, by means of a statement similar to that required by section 271(c)(1)(B), how and under what terms it would make those items available to that competitor and others when and if they are requested.”<sup>4</sup> Or, to put it another way, “[w]here the Bell operating company has offered to include all the checklist items in an interconnection agreement and has stated its willingness to offer them to others,” it “has done all that can be asked of it” and the Commission should “approve [its] application for that relief.”<sup>5</sup>

**C. The Act Does Not Require Actual Competition At Any Prescribed Level**

All of the foregoing analysis can be boiled down to a single principle: The Act is designed to open local markets by “ensur[ing] that a new competitor has the ability to obtain any of the items from the checklist.”<sup>6</sup> The Act does not require that a competitor has obtained the checklist items or that competitors collectively have obtained any particular market share.

Indeed, Congress rejected proposals that would have required a minimum level of actual competition before a Bell operating company could start providing long-distance service. The Senate, for example, rejected an amendment that would have conditioned long-distance entry on reaching an interconnection agreement with a competitor “capable of providing a substantial

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<sup>4</sup> 142 Cong. Rec. E261-262 (daily ed., Feb. 29, 1996).

<sup>5</sup> Id.

<sup>6</sup> Id. (emphasis added).

number of business and residential customers with” service.<sup>7</sup> Opponents of the amendment — who ultimately prevailed — as well as its supporters, understood that the bill, absent the amendment, would allow long-distance entry even if the Bell operating company's interconnection agreement was with a small carrier serving only a few customers.<sup>8</sup> The House of Representatives defeated a similar proposal, which would have foreclosed interLATA entry by a Bell company until local competitors had captured a 10 percent share of the market.<sup>9</sup>

Far from requiring a certain level of competition or number of competitors, the Act anticipates that a Bell company may, in the normal course, obtain interLATA relief in the complete absence of a single local competitor. Under Section 271(c)(1)(B), a Bell operating company that faces no local competition is still entitled to enter the long-distance market so long as it offers to make all the checklist items available to any future competitor through an effective or approved statement of generally available terms. As the Conference Report explains, subparagraph (B) “is intended to ensure that a BOC is not effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor . . . has sought to enter the market.”<sup>10</sup>

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<sup>7</sup> 141 Cong. Rec. S8310, S8319 (daily ed., June 14, 1995).

<sup>8</sup> *Id.* at S8319-20.

<sup>9</sup> See 141 Cong. Rec. H8424, H8454 (daily ed., Aug. 4, 1995) (Statement of Rep. Bunn).

<sup>10</sup> S. Conf. Rep. No. 230, 104th Cong. 2d Sess. 148 (1966). As Senator Kerrey recognized: “It may be that local competition does not develop immediately. We should not say to a RBOC, you cannot get into long distance under that circumstance.” 141 Cong. Rec. S8134, S8140 (daily ed., June 12, 1995).

To ensure that the presence of actual competition can never become a criterion for interLATA relief, the Act includes a provision — Section 271(d)(4) — that expressly bars the FCC from introducing such a requirement. Section 271(d)(4) forbids the FCC from “limit[ing] or extend[ing]” the terms of the competitive checklist, which are the statutory standards for an open market. Any form of an actual-competition test would constitute just such a prohibited extension.

It came as some surprise, therefore, when the United States Department of Justice recently advocated a construction of Section 271 that would, in practice, engraft on the Act just the sort of actual-competition requirement that Congress voted against and expressly prohibited. In the context of evaluating an application of SBC Communications Inc., the Department stated that, for the Bell company to satisfy the checklist requirements of Section 271(c)(2)(B), it is not enough for the company to provide or generally offer the listed facilities and services, as the statute states. Rather, according to the Department of Justice, only actual experience with a competitor that has entered the market and is operating on a commercial scale (not mere trials or demonstrations) is likely to convince the Department that the Bell company has met its responsibilities.<sup>11</sup> The Department's position is, to say the least, far afield from what the Act actually requires and would impose, in practice, a threshold test of actual competition to satisfy the checklist. Were the FCC to adopt the Department's position, it would run afoul of Congress's plain admonition in Section 271(d)(4) that “[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist.”

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<sup>11</sup> DOJ Evaluation at 28-30.

#### **D. Bell Company Entry Will Serve The Public Interest**

While Ameritech is correct that its entry into long distance will serve the public interest, Ameritech has, at least in part, not asked the right question. In describing how it meets the requirement of Section 271(d)(3)(C) (i.e., how “the requested authorization is consistent with the public interest, convenience, and necessity”), Ameritech devotes considerable effort to simply repeating what it has already said in the context of establishing compliance with Section 271(d)(3)(A) and (B) (i.e., that it has opened its local markets to competition by implementing the competitive checklist and has instituted statutory and regulatory safeguards that make it impossible for Ameritech to engage in anti-competitive conduct in the provision of long-distance service). But Congress could not have meant for the public-interest standard of subparagraph (c) to be redundant with its requirements in subparagraphs (A) and (B).<sup>12</sup>

In asking the Commission to ensure that a Bell company's requested interLATA authorization “is consistent with the public interest,” § 271(d)(3)(C), therefore, Congress must have expected the FCC to ensure that the requested authorization is consistent with provisions of the Act other than those covered by subparagraphs (A) and (B), and is compatible with the purposes of the Communications Act other than opening markets to competition.<sup>13</sup> For example,

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<sup>12</sup> United States v. Nordic Village, Inc., 503 U.S. 30, 36 (1992) (“a statute must, if possible, be construed in such fashion that every word has some operative effect”); Gustafson v. Alloyd Co., 115 S. Ct. 1061, 1069 (1995) (“the [Supreme] Court will avoid a reading which renders some words altogether redundant”).

<sup>13</sup> Reading the public interest standard to focus on these other policies of the Act not only avoids an internal contradiction in the statute, but also gives the provision a meaningful role that is consistent with the traditional one under the long-standing “public interest” standard of sections 214 and 310(d). In fact, the Commission itself has recognized that the Act embodies policies such as universal service that require careful consideration to ensure that they are not undermined by otherwise presumptively pro-competitive new entry. See In re MTS and WATS Market Structure, 81 F.C.C. 2d 177, ¶¶ 50-79 (1980).

the FCC's public-interest analysis may focus on whether a particular application is consistent with the Communications Act's policy concerning universal long distance service and related policies designed to equalize certain long distance rates, such as the statute's requirements of rate averaging and rate integration. See § 254(g). Reading the public-interest standard in this way gives the provision a meaningful function.

Even if the Commission concludes otherwise, however, and determines that the public-interest standard calls for a re-examination of the state of long-distance competition, that inquiry will be easy: all evidence shows that the long distance business is highly concentrated. The Department of Justice, for example, has found that competition in the long-distance business is “decidedly imperfect” and that there is “room for more competition.”<sup>14</sup> The FCC also has already acknowledged evidence that AT&T, MCI, and Sprint may jointly be engaged in noncompetitive, cooperative pricing,<sup>15</sup> and has specifically recognized that Bell company entry under the 1996 Act provides “the best solution” to deficient competition in the long distance

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<sup>14</sup> Memorandum of the United States in Response to the Bell Companies’ Motions for Generic Wireless Waivers at 22, United States v. Western Elec. Co., No. 82-0192 (D.D.C. Nov. 17, 1994); The Antitrust Reform Act: Hearings on H.R. 3626 Before the Subcomm. on Economic and Commercial Law of the House Comm. on the Judiciary, 103d Cong., 2d Sess. at 7 (1994) (statement of Assistant Attorney General Anne K. Bingaman).

<sup>15</sup> Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271, 3314-15 ¶¶ 82-83 (1995) (“AT&T Reclassification”); Second Report and Order, Policy and Rules Concerning the Interstate, Interexchange Marketplace, 4 Comm. Reg. (P & F) 1199 ¶ 123 (1996).

business.<sup>16</sup> Likewise, Congress itself concluded that the long distance market is indeed “oligopolistic.”<sup>17</sup>

Ameritech's brief summarizes just a dropper-full of existing evidence that shows the long-distance business is a tight oligopoly producing higher-priced, lower-quality service than a truly competitive market would yield. Additional evidence shows, for example, that the long-distance business is notable not for competition, but for lockstep price increases and high and rising price-cost margins.

As the FCC has recognized, AT&T, MCI, and Sprint have repeatedly announced virtually identical price increases, typically within days of one another.<sup>18</sup> In February 1996, for example, AT&T raised rates by 4.3 percent; within a few weeks, MCI announced that it would raise its rates by 4.9 percent, and Sprint announced a 5 percent hike.<sup>19</sup> Sprint then raised its long-distance rates twice in November 1996 (first by 3 percent and then by 2 percent), prompting AT&T to increase its rates by between 4.8 and 5.9 percent and MCI to raise its own by 4.9 percent, both effective December 1.<sup>20</sup>

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<sup>16</sup> Detariffing Order, 4 Comm. Reg. at ¶¶ 119, 125.

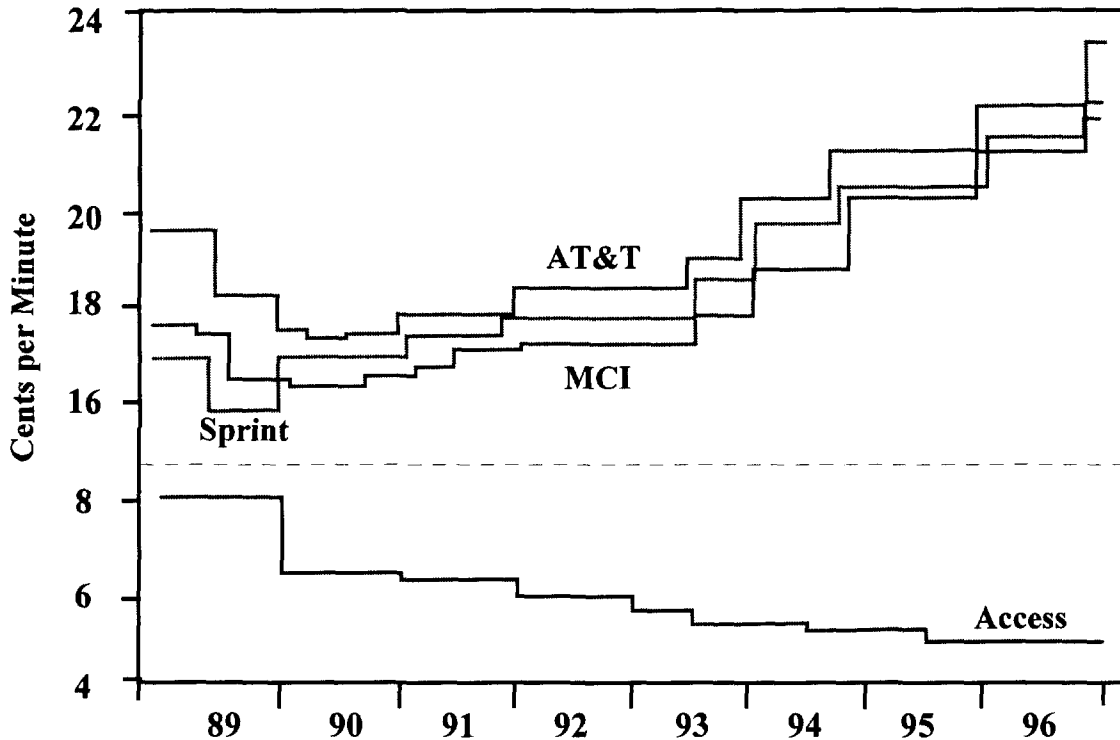
<sup>17</sup> See, e.g., 141 Cong. Rec. S7881, S7889 (daily ed., June 7, 1995) (statement of Sen. Pressler); see *id.* at S7906 (statement of Sen. Lott) (long distance industry displays “at best, limited competition”).

<sup>18</sup> AT&T Reclassification, 11 FCC Rcd at 3313, ¶ 81 (“[E]ach time AT&T has increased its basic rate, MCI and Sprint have quickly thereafter matched the increase.”)

<sup>19</sup> See Paula Squires, Deregulation Fails to Stop Rising Long Distance Rates, The Richmond Times Dispatch, Dec. 8, 1996, at E1; MCI Raising Rates with Rivals; Deregulation Fails to Stop Rising Long Distance Rates, L.A. Times, Nov. 30, 1996, at D3; AT&T Bumps Up Rates Before RBOC Long-Distance Entry, Report on AT&T, Feb. 26, 1996.

<sup>20</sup> See MCI Raising Rates with Rivals; Deregulation Fails to Stop Rising Long Distance Rates, at D3; *supra*.

### Recent Trends in Long Distance Rates and Exchange Access Charges\*



\*Source: The WEFA Group, The Economic Impact of Immediate Competition in Long Distance in Oklahoma.

In a competitive industry, entry by new firms and competition by incumbent firms drives prices toward cost. Yet price increases by the long-distance carriers have occurred despite declining costs. In particular, AT&T, MCI, and Sprint have benefited from reductions in access charges, which the carriers themselves say are by far the largest cost component of interexchange carriers' costs. From 1994 to 1996 alone, access charges declined by about 10 percent.

By raising prices despite these significant cost reductions, AT&T, MCI, and Sprint have increased significantly their already high price-cost margins, particularly for residential and small business service.<sup>21</sup> Professor MacAvoy calculates that for MTS/WATS telephone service, the

<sup>21</sup> See Paul W. MacAvoy, The Failure of Antitrust and Regulation to Establish Competition in Long-Distance Telephone Services 120 (1996).

long-distance carriers' price-cost margins rose from under 55 percent in 1987 to near 70 percent in 1994.<sup>22</sup> In a further sign of a lack of price competition, MCI and Sprint are reducing the gap between their prices and AT&T's, so that the price-cost margins of the three major carriers have converged at the same time that their rates have increased.<sup>23</sup> Consistent with this closing of ranks, MCI and Sprint no longer are taking share from AT&T.<sup>24</sup>

Consequently, if the public-interest standard of Section 271(d)(3)(C) were an invitation for the FCC to inquire into the state of long-distance competition, its findings would confirm what Congress has already concluded: long-distance would benefit greatly from the addition of new competitors.

In no event, however, should Section 271(d)(3)(C) be construed to permit the FCC to examine whether a particular local market would benefit from added competitors as a basis for approving a Bell company's application for interLATA authorization. Such an inquiry would be only a slight variation on a required showing of actual competition for interLATA authorization. As discussed above, however, Congress rejected the use of any such tests; indeed, it went so far as to include Section 271(d)(4) to bar the FCC from adding to (or subtracting from) the statutorily-prescribed test for determining whether the local market is open to competition. Any actual-competition inquiry in the guise of a public-interest test would be in defiance of this express provision.

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<sup>22</sup> See id. at 117, 118 Fig. 5-1.

<sup>23</sup> See id. at 102, 117-20.

<sup>24</sup> See FCC, Long Distance Market Shares Third Quarter 1996 (Jan. 1997).

The long-distance carriers will undoubtedly bombard the Commission with claims — irrelevant to the statutory test — that a Bell company's entry would have anti-competitive effects. The same tired accusations have been rolled out time and time again by the incumbents whenever a local carrier seeks to enter a long-distance market, and whenever a Bell company, in particular, seeks to enter any new line of business that depends to some degree on interconnection with the local telephone network. And each time their claims have proved demonstrably false. In fact, each time, concrete benefits have resulted for consumers as output has increased and prices fallen.

Long-distance Service in the New Jersey Corridors. The MFJ permitted NYNEX and Bell Atlantic to provide interstate, interLATA services to in-region customers in two small geographic corridors running from New York City and Philadelphia into New Jersey. See United States v. Western Elec. Co., 569 F. Supp. 990, 1018-19, 1023 (D.D.C. 1983). In these corridors, NYNEX and Bell Atlantic have set their prices well below those of the major carriers. In fact, according to AT&T's own figures Bell Atlantic's corridor rates are as much as one-third lower than AT&T's.<sup>25</sup>

AT&T petitioned the FCC for authority to reduce its long-distance rates for New Jersey customers in these corridors precisely because it faces more competition there than elsewhere. MCI followed suit, petitioning the FCC "so that [MCI] likewise [would] be in a position to benefit consumers by being able to compete effectively against Bell Atlantic and AT&T."<sup>26</sup> In

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<sup>25</sup> AT&T Corp.'s Petition for Waiver and Request for Expedited Consideration, AT&T Petition for Waiver of Section 64.1701 of the Commission's Rules, CC Docket No. 96-26 Attachment A (FCC Oct. 23, 1996) ("AT&T Waiver Petition").

<sup>26</sup> MCI Comments, AT&T Petition for Waiver of Section 64.1701 of the Commission's Rules, CC Docket No. 96-26 (FCC filed Nov. 18, 1996) at 1 (emphasis added).

their petitions, both AT&T and MCI frankly admitted that consumers in these corridors are better off than consumers who cannot obtain long-distance service from an incumbent Bell company.<sup>27</sup>

Competition in Connecticut. SNET's brief history as an interstate carrier in Connecticut serves as another dramatic example of the beneficial effects of a local exchange carrier's entry in long distance. Since 1994, SNET has offered interstate, interLATA services to its local customers. The result has been lower rates for Connecticut consumers, on intrastate as well as interstate calls. On average, SNET has set its interstate rates 15 to 25 percent below AT&T's undiscounted rates.

AT&T therefore asked the FCC for authority to reduce its long-distance rates in Connecticut even as it raises them in other States where Bell companies are barred from providing interLATA service.<sup>28</sup> Being unable to lower its interstate long-distance rates in Connecticut without doing so elsewhere, however, AT&T answered SNET's advances with intrastate toll promotions targeted at customers who use AT&T for interstate service as well.<sup>29</sup> SNET has countered in classic competitive fashion, with new intrastate and interstate

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<sup>27</sup> See AT&T Waiver Petition at 5 (consumers in the corridors, unlike other areas, "benefit from the highest degree of competition possible"); MCI Comments at 3 ("fully support[ing]" AT&T arguments).

<sup>28</sup> AT&T Comments, Market Definition, Separations, Rate Averaging and Rate Integration, at 29, Policy and Rules Concerning the Interstate, Interexchange Marketplace & Implementation of Section 254(g), CC Dk. No. 96-61 (FCC Apr. 19, 1996) ("AT&T Rate Averaging Comments"); AT&T Corp.'s Petition for Reconsideration, Policy and Rules Concerning the Interstate, Interexchange Marketplace at 2-5 (FCC Sept. 16, 1996).

<sup>29</sup> William Hathaway, AT&T Making New Rate Offer in Connecticut, The Hartford Courant, May 17, 1996, at F1 (5 cents per minute flat rate on intrastate calls); see AT&T Petition for Reconsideration at 4; AT&T Rate Averaging Comments at 30.

promotions.<sup>30</sup> Throughout this competitive tussle, SNET has shown both the willingness and ability to compete for low-volume AT&T customers who have been ignored by MCI and Sprint; and whereas SNET's share of revenues is 20 percent, its share of customers is half-again as high.<sup>31</sup>

Cellular. The Bell companies long have been permitted to participate in the cellular business, and during that time, subscribership has soared from nearly zero in the early 1980s to over 35 million today,<sup>32</sup> with more cellular phones being activated than new wireline telephones.<sup>33</sup> The average cellular bill has fallen by over 60 percent since 1987.<sup>34</sup> The Bell companies, moreover, do not dominate local cellular markets. Indeed, the market shares of the two local carriers in each local calling area are roughly equal, and the Commission itself concluded that "the wireless communications business is one in which relatively small, entrepreneurial competitors have often been as successful as . . . the BOCs."<sup>35</sup> Sophisticated companies including the likes of AT&T have invested billions in wireless spectrum to compete

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<sup>30</sup> Susan Jackson, A Telecom Yankee Defends its Turf, Business Week, Oct. 28, 1996, at 167 (one-second billing increments and free interstate calls).

<sup>31</sup> Id.

<sup>32</sup> Competition in Commercial Mobile Radio Services Second Annual Report at 9, Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, FCC 97-75 (Mar. 25, 1997).

<sup>33</sup> Compare with FCC Trends in Telephone Service, March 1997 at 25. Id.

<sup>34</sup> CTIA, The Wireless Sourcebook, 15.

<sup>35</sup> Memorandum and Opinion and Order, Applications of Craig O. McCaw and AT&T, 9 FCC Rcd 5836, 5861-62, ¶ 38 (1994)

with the Bell companies -- an investment that never would have been made if those companies really believed that the Bell companies could frustrate competition.

Information Services. Despite claims by opponents of information service relief that the Bell companies would impede competition, see United States v. Western Elec. Co., 993 F.2d 1572, 1582 (D.C. Cir., cert. denied, 510 U.S. 984, 1993), the opposite has proven to be true. The information services market continues to be one of the fastest growing segments of the U.S. economy.<sup>36</sup> And, while the Bell companies have contributed to this growth and to the offering of innovative services, particularly to the mass residential market, their role is dwarfed by the likes of AT&T, MCI, IBM, TCI, Time Warner, American Airlines, EDS, Octel and Microsoft. For example, the voice messaging business, where the Bell companies have focused their efforts, has grown at a double-digit rate, monthly service fees for voice messaging have dropped by half, and the Bell companies on average have no more than a three percent share of this business.<sup>37</sup>

CPE. Finally, Bell companies have been permitted since 1984 to distribute customer premises equipment ("CPE"), but have not become dominant providers. Rather, their collective market share has fallen below five percent -- less than one percent each on average.<sup>38</sup> As the D.C.

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<sup>36</sup> See, e.g., U.S. Commerce Dep't, Industrial Outlook 1994 25-1.

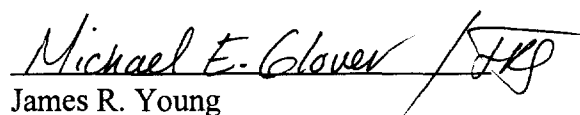
<sup>37</sup> See Hausman & Tardiff, Benefits of Vertical Integration of Basic and Enhanced Telecommunications Services 10, 11 (Apr. 6, 1995). Several BOCs have achieved an approximately six percent share of the voice messaging services business, but that drops to no more than three percent when directly competing voice messaging equipment also is considered.

<sup>38</sup> NATA, 1995 Telecommunications Review and Forecast 128 (1995).

Circuit explained, the CPE market “has supported competition even though the BOCs” theoretically “possess[] an incentive to discriminate in interconnection.”<sup>39</sup>

In each of these examples, there is one constant. Contrary to the self-serving claims of the long-distance carriers or other incumbents, Bell company entry has benefited competition and consumers. Bell company in-region, interlata entry would do the same.

Respectfully submitted,



James R. Young  
Edward D. Young III  
Michael E. Glover  
Leslie A. Vial  
1320 N. Courthouse Road  
8th Floor  
Arlington, VA 22201  
(703) 974-2944

Attorneys for Bell Atlantic

June 10, 1997

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<sup>39</sup> United States v. Western Elec. Co., 900 F.2d 283, 303 (D.C. Cir. 1990), cert. denied, 498 U.S. 911 (1990).